

Admin.

October 11, 2010

First Supplement to Memorandum 2010-39

New Topics and Priorities: Additional Comments

The Commission has received the following new communications relating to its topics and priorities for the coming year:

| | <i>Exhibit p.</i> |
|---|-------------------|
| • Amy Di Constanzo (Oct. 9, 2010) | 1 |
| • John Hsu, Berkeley (Oct. 2, 2010) | 2 |
| • Ruby Lacourse (Oct. 4, 2010) | 4 |
| • Jaclyn Wilhite (Oct. 6, 2010) | 6 |
| • Casey Young, AARP (Oct. 8, 2010) | 8 |

The staff regrets that it is not able to provide a detailed analysis of these new communications. Briefly, the nature of the communications is as follows:

- Ms. Di Constanzo has encountered problems collecting child support from her ex-husband. She is frustrated about having to go to court over and over again. She suggests establishing a rule similar to the three strikes concept in the context of child support collection. Exhibit p. 1.
- Mr. Hsu presents extensive additional materials encouraging the Commission to study the Administrative Adjudication Bill of Rights and the vexatious litigant statutes. In the interest of economy and due to time constraints, the staff has only reproduced Mr. Hsu's cover letter in this memorandum. Exhibit pp. 2-3. We will bring his extensive enclosures to the upcoming meeting.
- Ms. Lacourse presents additional explanation of why the Commission should study immigration-motivated marriages. She refers in particular to the Uniform Probate Code as a potential model for consideration. Exhibit pp. 4-5.
- Ms. Wilhite provides further detail regarding her case and her frustrations with default judgment procedure. Exhibit pp. 6-7. The staff notes that it incorrectly referred to her as Ms. White in Memorandum 2010-39, instead of Ms. Wilhite. We apologize for this error.

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting.

- On behalf of AARP, Mr. Young urges the Commission “to include as a high priority for study in 2011 a review of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act compared to existing California law in order to make recommendations concerning the adoption of this uniform act in California.” Exhibit p. 8. He points out that 20 jurisdictions have already adopted the uniform act and AARP “would like to see California added to the list so our members in this state will have the benefit of this uniform approach to resolving problems relating to multiple jurisdictions, transfers, and out-of-state recognition.” *Id.*

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

EMAIL FROM AMY DI CONSTANZO (OCT. 9, 2010)

Dear Sirs and Madams of the California Law Revision Commission,

My name is Amy Grossman Di Costanzo and I live at 1710 Sonoma Ave. Berkeley, CA 94707, tel # 510 772-6324 (cell). I was referred to you by my lawyer. I know that there have been many positive reforms in the last few years regarding Child Support collection laws. However, there is one situation wherein none of those laws pertain. A case where there is no paycheck the bank account is not used for depositing income, and property is hidden in the name of other people. I am speaking about my case and surely that of many others. I have been in a CS case for 5 years wherein the father of my children is self-employed. He has made evading CS responsibility seemingly his life's goal. We separated end of 2005 and I went about trying to prove how much money he made in 2006. I proved that he was asking for payments in cash and later asking his customers to make the checks out to his girlfriend into whose (dedicated) checking account he placed all his check earnings. He began by fraudulently declaring he earned \$19,000/yr. By the end of 2006 he had admitted to (fraudulently) \$59,000 for that year. By the end of 2008, right before the CS trial he was forced to admit in writing to the Court he had earned \$104,000 in 2006. I proved he had earned an additional \$22,000 on top of that for a grand total of \$126,000 in 2006. He was assessed \$2,226/month CS in Jan 2009 by Judge Dan Grimmer in Fremont. Judge Grimmer's decision told of my ex's untruthfulness and all the fraudulent documents he and his girlfriend produced for the Court. Everything from I&E's, invoices, Profit & Loss Statements etc. were proven fraudulent.

Needless to say he has never paid CS. He purchased a house in 2008 and put it in his girlfriend's name. My only recourse is to file contempt of Court charges which end up costing me money as each time there must be a trial and I have to prove he is willfully not paying although he can afford to. He tells the Court he is destitute and can't even pay the rent (to the girlfriend who is his "landlady" in the house that he purchased.) I have even had to hire witnesses to pretend to be customers to show that he asks for cash, doesn't declare it, and has plenty of work. This is ridiculous.

Yet every time we have a new contempt trial he gets to start fresh, as if he had never done anything bad in the recent past. At trial under oath every single time, he says he is destitute and it is up to me to prove that he isn't, even though HE HAS BEEN GOING TO JAIL FOR WILLFULLY NOT PAYING CS IN THE RECENT PAST! He tells people he would rather go to jail than pay CS. The Judge says we can't use previous findings even though they show that he perjured himself over and over again. He has been assessed my Lawyer's fees but he doesn't pay, of course.

I would like to see the law changed regarding these self-employed dead beats that says basically "if you perjured yourself in a Child Support trial more than once, you will not be believed in future trials." No new chances to perjure yourself again and again and place the burden to prove the ex is lying on the already stressed-out parent who has full time custody. Similar to the "three strikes" idea. Any suggestions?

Sincerely,

Amy Di Costanzo

October 2, 2010

Brian Hebert, Esq.
Barbara Gaal, Esq.
California Law Revision Commission
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Palo Alto, CA 94303-4739
Tel.: (650) 494-1335

Law Revision Commission
RECEIVED

OCT - 4 2010

File: _____

Re: Suggested law reforms

- Administrative Adjudication Bill of Rights
- Vexatious Litigant Statute

Dear Mr. Hebert and Ms. Gaal:

Today I received Ms. Gaal's 10/1/2010 letter about "Suggested law reforms." I would like to thank the Commission and its staff for considering my suggestions, and for identifying the additional information in support that is required. Because the Commission still receives further comments, here I respectfully submit the additional material in support:

1. Alameda County Superior Court's Orders and Decisions

These are Docs. 1, 2, 3 attached at the end of the 3/5/2010 Petition for Writ of Mandate submitted to the California Supreme Court.

2. Other evidence supporting the assertions about what the courts did

These are Docs. 4, 5, 6 attached at the end of the 3/5/2010 Petition for Writ of Mandate submitted to the California Supreme Court.

The text of the Petition provides additional explanations. The "Chronology of Pertinent Events" summarizes the essential facts. The "Introduction" and "Arguments" point out the **pressing need** for resolution of the issues.

3. Updated summaries of "Constitutional Challenges to California's Vexatious Litigant Statute"

A. Summary in narrative form

A central new appellate decision is the Court of Appeal's 4/5/2010 opinion in *Shalant v. Girandi*, 183 Cal.App.4th 545, explaining why the vexatious litigant statute should be **narrowly** construed, rather than **broadly** construed, in light of the fundamental importance of the right of access to the courts.

B. List of the specific statutory languages giving rise to Constitutional challenges, followed by the specific grounds for the challenges.

4. Communications with Judicial Council's Vexatious Litigant Unit

In a 6/30/2010 telephone conversation with Mr. Brad Campbell of the Judicial Council, Mr. Campbell informed me that the Judicial Council was, at that time, receiving comments about a Judicial Council Form related to the Vexatious Litigant statute. In my 7/2/2010 letter to him, I therefore made my suggestions. On 8/13/2010, I mailed to him additional summaries of the Constitutional challenges to the statute, very similar in content to Item # 3 above.

To my suggestions, Mr. Campbell responded on 8/16/2010, stating: "Thank you very much for your thoughtful responses."

The list of "vexatious litigants" maintained by the Judicial Council currently includes over 1,000 entries. The Judicial Council is likely able to provide information to the Commission about whether there is "any widespread dissatisfaction" with this statute. From what I know, several people on the list are very upset with the statute. In addition, the California statute is inconsistent with, if not **vastly different** from, the vexatious litigant standards currently applied in the federal court.

The Commission's further consideration of my suggestion is deeply appreciated.

Respectfully submitted,



John Hsu
P. O. Box 1255
Berkeley, CA 94701

EMAIL FROM RUBY LACOURSE (OCT. 4, 2010)

Thank you for e-mailing me regarding this topic. Please let me know if there is anything else I can do. I do not want this to go away. I would like to see something done, if there are any elective officials I can e-mail, please let me know who they are.

I would like to have someone read to the commission at this meeting the Uniform Probate Code of the United States - please see below the excerpt I found:

Basically what the Uniform Probate Code states is that a later in life marriage where there was no contribution of money into a marriage by one of the parties, that they should not reap the benefits of the other who unfortunately met their demise.

These codes have not been adopted by the State of California. Only about 17 states in the US have adopted the Uniform Probate Code Laws. This may be enough to deter the problem that we had with this woman from the Philippines.

We have come to an end of our story, and unfortunately, it was a big cost to us, as she still was able to get money from the estate. We had to settle this as the court system down there is so slow, and after three court dates, still nothing had been discussed or settled, and we were asked to meet with a mediator. This ended up costing Jennifer (his daughter) \$130,000 from her share of the estate, having to pay this so-called wife of his \$77,500, and the lawyer for the estate over \$50,000. This is totally not acceptable, but to get it over with, and to be able to move on with our lives, we decided it was best for our health and our mental health to do this.

I am hoping that California will do something about this law, only to prevent it from happening to someone else. This was a nightmare. I would also like to state that no matter what she claims, this marriage was a marriage of convenience, and only for the purposes of getting her to the United States, i.e. a total sham, and she was able to profit from committing a crime against the United States. How many more elderly, sick, and lonely people is this going to happen to and how many other families is this going to destroy and torment before the California law is changed?

Thank you
Ruby Lacourse

I only have copied a few items, but it can be found under google, under Uniform Probate Code. I am sure you may have it in hard copy too. Tks.

(searched for - i.e. partnership theory of marriage, and short-term later in life marriages, redesigned elective share).

In the short-term, later-in-life marriage illustrated in Example 2, the effect of implementing a partnership theory is to decrease or even eliminate the entitlement of the surviving spouse because in such a marriage neither spouse is likely to have contributed much, if anything, to the acquisition of the other's wealth. Put differently, the effect is to deny a windfall to the survivor who contributed little to decedent's wealth, and ultimately to deny a windfall to the survivor's children by a prior marriage at the expense of the decedent's children by a prior marriage. Bear in mind that in such a marriage, which produces no children, a decedent who disinherits or largely disinherits the surviving spouse may not be acting so much from malice or spite toward the surviving spouse, but from a natural instinct to want to leave most or all of his or her property to the children of

his or her former, long-term marriage. In hardship cases, however, as explained later, a special supplemental elective-share amount is provided when the surviving spouse would otherwise be left without sufficient funds for support.

The general effect of implementing the partnership theory in elective-share law is to increase the entitlement of a surviving spouse in a long-term marriage in cases in which the marital assets were disproportionately titled in the decedent's name; and to decrease or even eliminate the entitlement of a surviving spouse in a long-term marriage in cases in which the marital assets were more or less equally titled or disproportionately titled in the surviving spouse's name. A further general effect is to decrease or even eliminate the entitlement of a surviving spouse in a short-term, later-in-life marriage in which neither spouse contributed much, if anything, to the acquisition of the other's wealth, except that a special supplemental elective-share amount is provided in cases in which the surviving spouse would otherwise be left without sufficient funds for support.

Short-term, Later-in-Life Marriages. Short-term marriages, particularly the short-term marriage later in life, present different considerations. Because each spouse in this type of marriage typically comes into the marriage owning assets derived from a former marriage, the one-third fraction of the decedent's estate far exceeds a 50/50 division of assets acquired during the marriage.

Example 2-Short-term, Later-in-Life Marriage under Conventional Elective-share Law.

Consider B and C. A year or so after A's death, B married C. Both B and C are in their seventies, and after five years of marriage, B dies survived by C. Both B and C have adult children and a few grandchildren by their prior marriages, and each naturally would prefer to leave most or all of his or her property to those children.

The value of the couple's combined assets is \$600,000, \$300,000 of which is titled in B's name (the decedent) and \$300,000 of which is titled in C's name (the survivor).

For reasons that are not immediately apparent, conventional elective-share law gives the survivor, C, a right to claim one-third of B's estate, thereby shrinking B's estate (and hence the share of B's children by B's prior marriage to A) by \$100,000 (reducing it to \$200,000) while supplementing C's assets (which will likely go to C's children by C's prior marriage) by \$100,000 (increasing their value to \$400,000).

Conventional elective-share law, in other words, basically rewards the children of the remarried spouse who manages to outlive the other, arranging for those children a windfall share of one third of the "loser's" estate. The "winning" spouse who chanced to survive gains a windfall, for this "winner" is unlikely to have made a contribution, monetary or otherwise, to the "loser's" wealth remotely worth one-third.

EMAIL FROM JACLYN WILHITE (OCT. 6, 2010)

Thank you so much. I thank you for the consideration.

Originally I sent a more detailed version of reasons I was concerned for a change in default judgment procedure, however, after it was accidentally erased due to a fault when I submitted an online form, I sent a hastier version of my suggestion.

My letter:

I believe the default judgment procedure should be changed. In June, after working a case for 11 months, the defendant chose not to attend the hearing. It was very awkward, talking to the judge when there was no one on the other side for him to assess. I also made the mistake in becoming overly confident and also felt silly, and chose not to express how upsetting it was and how financially stressed I was during my presentation, because I felt my winning was inevitable. Perhaps other people in the courtroom felt the same. So it was with great shock, when the judge ruled in favor of the defendant although she failed to make an appearance. I pleaded with the judge as he stood to leave the courtroom to instead dismiss the case without prejudice, and he was quite cruel and said No.

I had receipts and pictures, a police report and proof of service.

I had put a lot of effort into the case. I had filed the case three times. The first case, I delivered the court orders to the lobby in person, by personal service and did not return the forms which documented the service. The secondary defendant showed up and the judge favor without proof of service while the case was dismissed against the primary defendant who did not appear on ground of proof of service. The second case I filed only against the primary defendant, and she was correctly served however, again I failed to return to the courthouse one of the two copies of the proof of service mailed to me by the official server.

I was the only one who appeared for the hearing not knowing it had been cancelled. So I tried again. I again filed the case against both the defendants and used an official server and appropriately mailed the courts copy of proof of service to the court. I also was contacted by a syndicate show who I gave permission after both the first and third filings to contact each of the defendants to help pay the fine.

A week before, the court date, I encountered the primary defendant and she told me she was leaving the state.

Worse, I thought that I could still get the verdict changed because it was astonishing. That is when I found out that defendants have 30 days to answer and that the plaintiff has to file a request for a default judgment. I don't know if that would have changed the outcome in this case. However, this was the first I had ever heard. Not only should filees be notified of the expectation of the court but I feel it is in the best interest to clarify the policies surrounding default judgment. I was not even notified by the clerk after 30 days. Really we should all have a chance to appear at the hearing. However, I really do not feel the judge should be able to not make a default ruling or even worse rule in favor of an absent party. Judges should not be able to rule in favor of defendants that have fail to make an appearance or send an answer to the court, only able to dismiss. I felt very

violated. I can get a judgment if I pay a \$600 fee to the appeals court but I likely may never get that money back either.

This is the second time a year my tires were cut. I had the tires replaced in June 2008, before they were cut again in July 2009. The first time, I lost my residence and had no place to live and no car for the previous 8 months it took me to get back on my feet. This time, I also had to move and could not buy groceries for 3 months.

It is very devastating that people have no regard for my property or the rules of the court.



October 8, 2010

California Law Revision Commission
c/o Brian Hebert, Executive Secretary
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303-4739

Re: Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

Commissioners:

On behalf of AARP, I want to urge the commission to include as a high priority for study in 2011 a review of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act compared to existing California law in order to make recommendations concerning the adoption of this uniform act in California.

AARP national policy staff consulted with the Uniform Law Commission in the development of this proposed uniform law, which has already been adopted by 20 jurisdictions. We would like to see California added to the list so our members in this state will have the benefit of this uniform approach to resolving problems related to multiple jurisdictions, transfers, and out-of-state recognition.

We recognize the commission has a number of worthy projects it is considering for 2011. This one, we believe, should be near the top of your list. With increased population mobility and an aging population, cases involving simultaneous and conflicting jurisdiction over guardianship are increasing and will continue to increase.

We would be pleased to assist in this study in any manner the commission believes would be helpful.

Respectfully,

A handwritten signature in black ink, appearing to read "Casey L. Young". The signature is stylized with a large, sweeping "C" and a long, horizontal stroke at the end.

CASEY L. YOUNG
Associate State Director-Advocacy
AARP California

cc Sally Hurme
Naomi Karp
Jackie McGrath